



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

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CERTIFIED MAIL

Richard A. Nylen, Esq.
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12 Post Office Square
Boston, Massachusetts 02109

July 25, 2007

Re: NEWBURYPORT - Solid Wastes/COR
Crow Lane Landfill
Resumption Request- Placement of C & D
Denial
FMF No. 39545

Dear Attorney Nylen:

The Massachusetts Department of Environmental Protection (the "MassDEP") and the Office of the Attorney General are in receipt of your letter dated July 16, 2007. Your letter responds to the July 4, 2007 Notice of Noncompliance (the "July 4th Notice") issued by the MassDEP to your client, New Ventures Associates, LLC ("New Ventures") pursuant to Paragraph 9 of the Preliminary Injunction entered on October 20, 2006 in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court, Civil Action No. 06-0790 C as amended by order of the Court on November 1, 2006 and February 22, 2007 (the "Order") for the Crow Lane Landfill (the "Landfill") in Newburyport, Massachusetts.

In your letter, you request that the MassDEP "lift the Paragraph 9 sanctions and allow the closure to continue so that the Newburyport residents do not have to be exposed to the landfill gases any longer than necessary". You assert that MassDEP's requirement to cease the receipt and placement of Construction and Demolition ("C&D") material under Paragraph 9 of the Order is short sighted and that, as a result, the exposure of the residents of the City of Newburyport to landfill gas has been extended. In addition, you assert that the MassDEP's actions have "unnecessarily" delayed the construction of the berm and extended the closure of the landfill. However, your letter fails to acknowledge that Paragraph 9 work stoppage notices are issued because of New Ventures' failure to comply with the Order's requirements and New Ventures' inability to carry out the landfill closure in a manner that protects the residents from repeated exposure to noxious landfill gases.

In your request that New Ventures be allowed to resume placing C&D at the landfill, you argue that New Ventures' failure to comply with the Order's requirement that a consultant conduct weekly inspections and provide the Department with Weekly Status Reports "...is clearly not a violation that warrants halting the disposal of C&D material at the Landfill". In addition, you attribute the failure to conduct the weekly inspections and to provide the Weekly Status Reports to the need for your consultant, SITEC, to work on other tasks required by the Order or MassDEP to stop, mitigate, or to prevent landfill gas releases that threaten public health, safety, and welfare. Your position merely confirms New Ventures' continuing failure or inability to allocate sufficient resources to conduct activities at the Landfill in a manner necessary to comply with the Order, and in a manner that will ensure the health, safety and welfare of the community. In sum, New Ventures must perform necessary remedial actions promptly while continuing to conduct all required closure work, monitoring, assessment and reporting required by the Order.

On numerous occasions your client has either directly stated or implied in the presence of representatives of the MassDEP, the Attorney General's Office, and the City of Newburyport that New Ventures does not have the resources to conduct the activities at the Landfill in the required timeframe and manner. These statements are a matter of growing concern to the Commonwealth and provide an additional basis for: (1) MassDEP's recent notice to New Ventures of MassDEP's intent to issue a Default Notice to the Trustee of the FAM account; and (2) MassDEP's recent issuance of a Notice of Responsibility/Notice of Response Action to your clients, which includes a request that they provide additional information regarding their financial resources.

The MassDEP's July 4, 2007 Notice is only the latest in a series of Notices issued because of New Ventures' repeated noncompliance with the Order. It is New Ventures' repeated and continued violations of the Order that have caused a delay of the landfill's closure, and the continuing releases of landfill gas and Hydrogen Sulfide ("H₂S"), and the repeated but avoidable threats to the public health, safety and welfare of the residents of the neighborhoods around the Landfill.

New Ventures continues to be in noncompliance with the provisions of the Order including, without limitation:

1. Paragraph 1(p) of the Order requires that New Ventures submit for MassDEP's approval a geotechnical evaluation of the Landfill's perimeter berm and, within 7 days of receipt from the MassDEP of notice of any deficiencies in the evaluation, submit for MassDEP's approval a response that addresses the deficiencies and any other concerns raised by the MassDEP. On March 7, 2007, the MassDEP issued a notice of deficiency to New Ventures that identified a number of deficiencies in the geotechnical evaluation including additional engineering documentation on the as-built condition of the existing berm that is needed to validate the underlying assumptions used in the geotechnical evaluation. New Ventures did not provide a substantive response to the deficiency notice until June 4, 2007 and that response failed to fully address the issues and concerns raised in the deficiency notice.

As described in the MassDEP's July 4, 2007 Notice, New Ventures has not provided sufficient information on the as-constructed conditions of the existing berm for the MassDEP to validate the assumptions used in the geotechnical evaluation and to demonstrate the appropriateness of the proposed Factors of Safety and the revised design. In fact, New Ventures has stated, both directly and through you, that it will not perform the additional geotechnical borings that the MassDEP has identified are necessary to collect the data to support the geotechnical evaluation.

The geotechnical boring program outlined by the MassDEP is consistent with good engineering practices and industry standards. It is necessary because of New Ventures' failure to provide the

quality assurance and quality control documentation for the as-built berm consistent with good engineering practices and industry standards for such construction and as required by 310 CMR 19.106. This includes New Ventures' failure to provide inspection reports or a certification pursuant to 310 CMR 19.011 and 19.017, from either the current Engineer of Record, SITEC, or from GZA GeoEnvironmental, Inc. ("GZA"), the former Engineer of Record at the time of construction of the western and northern portions of the berm, for the construction and as-built conditions of the existing berm. Furthermore, the City of Newburyport's consultant, Metcalf and Eddy, Inc. of Wakefield, Massachusetts commented on the initial Geotechnical Evaluation submitted by Geocomp and also recommended that a geotechnical boring program be conducted to determine the as-built condition of the berm and validate the underlying assumptions of the Geotechnical Evaluation.

Moreover, New Ventures' own geotechnical consultants have stated that additional geotechnical information should be obtained to verify the stability of the berm. Indeed, the Geocomp report dated May 8, 2007, page 1 states:

"Sitec Environmental, Inc., based on its knowledge, has indicated that a surficial deposit of soft organic soils, that was known to exist beneath the footprint of the existing perimeter berm, was removed and replace with controlled fill. This knowledge is based on photographic documentation provided by New Ventures as well as testimony from New Ventures management personnel that were present during the work. Our stability analyses have, therefore, assumed that these soft soils are not present. *However, unless construction documentation can be provided to verify that, in fact, the organic soils have been removed, we recommend that additional investigation be performed to confirm the organic soils are not present. If the organic soils were to exist, our stability analyses would not be valid, and the proposed MSE berm design would have to be revised.*" (emphasis added). In addition, page 2 of the report states, "Geotesting Express Inc. also performed a large scale direct shear test on a composite sample made from representative samples P1-9 and P1-6. ... *Additional strength testing will be required during construction to conform that the berm is constructed with materials that meet or exceed the design strength assumption [assumed 40 degrees]*" (emphasis added)

2. Paragraph 1(d) of the Order requires that New Ventures install and operate in conjunction with the automated enclosed flare a permanent LFG pre-treatment system consisting of three (3) pre-treatment vessels twenty four (24) hours a day, seven (7) days a week, in accordance with the performance standards in Appendix A of the Order and with demonstrated effectiveness at controlling hydrogen sulfide, sulfur dioxide, and other LFG emissions to meet the requirements of M.G.L. c. 111, § 150A, and the implementing regulations at 310 CMR 19.000 *et seq.*, and M.G.L. c. 111, § 142 A-B, and the implementing regulations at 310 CMR 7.00 *et seq.*. Appendix A Section G requires that the LFG System shall be adjusted and other measures taken as necessary to control and mitigate the release of landfill gas from the site and optimize the operation of the LFG System.

As described in the MassDEP's July 4, 2007 Notice, representatives of MassDEP continue to routinely collect data on the composition of the landfill gas entering the pre-treatment system, between the pre-treatment vessels, and after the pre-treatment system at the inlet to the enclosed landfill gas flare. This data continues to show that ambient air is infiltrating the pre-treatment vessels and, for the reasons described in the July 4th Notice, New Ventures continues to operate the landfill gas pre-treatment system in violation of the Order.

3. Paragraph 1(r) of the Order requires that New Ventures complete the installation of the flexible membrane liner (“FML”) and the Geocomposite gas collection system in accordance with the Phase I and II Gas Vent Design Plans. As you acknowledge in your letter, New Ventures has not completed the anchoring of the FML in the Phase II Area and has modified the anchoring design from set forth in the Phase I and II Gas Vent Design Plans. As a result, the anchoring of the FML within the Phase II Area is in violation of the Order. In addition, as described in the MassDEP's July 4, 2007 Notice, installation of the Geocomposite gas vent system is still not complete.
4. Paragraphs 1 (b) and 1 (d) of the Order require, among other things, that the Engineer of Record for the project, SITEC, conduct weekly inspections of the landfill and provide a Weekly Status Report to the MassDEP within two (2) working days of the date of the inspection by either email or facsimile. In your letter, you acknowledge that SITEC has not conducted the required inspections. As discussed above, this reflects the repeated and continuing failure of New Ventures client to allocate sufficient resources in order to perform the required tasks in parallel rather than in series.

You further state that New Ventures will request that Mr. Quatromoni attempt to return to compliance with the Order's weekly report requirements. As noted above, the Order requires that SITEC conduct both a weekly site inspection and file a Weekly Status Report.

On July 25, 2007 the MassDEP received Weekly Status Reports from SITEC for inspections conducted at the Landfill on July 11, 2007 and July 20, 2007. As stated above, the Preliminary Injunction requires the submittal of Weekly Status Reports to the MassDEP within two (2) working days of the date of the inspection. The July 11, 2007 report was due to the MassDEP by the close of business on July 13, 2007 and the July 20, 2007 by the close of business on July 24, 2007. New Ventures failed to comply with the provisions of the Preliminary Injunction with regards to the submittal of these reports. In addition, these are the first Weekly Status Reports that SITEC has provided to the MassDEP since on or about April 22, 2007.

5. Paragraphs 1 (b) and 1 (d) of the Order also require, among other things, that Ventures operate the enclosed flare and landfill gas (LFG) pre-treatment system at the Landfill in accordance with the performance standards in the LFG protocol attached to the Order as “Appendix A,” Appendix A, Section F. 2.f. of the Order requires, in part, that: New Ventures collect one (1) sample of landfill gas per month from the inlet of the landfill gas flare for laboratory analysis of sulfide compounds (sulfides, mercaptans, and thiols) using EPA Method 15 using GC/FPD or equivalent and for volatile organic compounds (VOCs) using EPA Method TO-15 or equivalent shall also be required. New Ventures has not collected the required sample for the month of July 2007.
6. Paragraph 1(j) of the Order requires New Ventures to completely cover with impervious tarps all uncapped areas of the Landfill containing C&D Material, with the exception of areas that in the past twenty four (24) hours have undergone filling, grading, shaping, or Geocomposite gas collection system installation activity, which areas shall be completely covered at all times when no work on that area is in progress, using removable, impervious tarps or poly sheeting at least 11 millimeters thick. The required tarps must be placed in accordance with the performance standards and “tarp and poly sheet placement protocol” attached to the Order as “Appendix B.” As recently as July 19, 2007, representatives of MassDEP have inspected the site and observed exposed C&D material that is not covered by tarps including, without limitation, along the south slope to the east of the currently tarped area and at the top of the haul road.
7. Paragraph 1(v) of the Order requires that New Ventures maintain, improve and expand the leachate control system as necessary to assure effective leachate control in compliance with the applicable

requirements of 310 CMR 19.00 et. seq and the terms and the requirements of the Administrative Consent Order and Penalty issued by the Department in April 2005 (“2005 ACOP”). The leachate control plans required by the 2005 ACOP as approved by the MassDEP require that the volume of leachate in the leachate collection tanks be maintained at less than 75% of the effective capacity of the tanks. During inspections of the Landfill on July 13, 16, and 19, 2007 a representative of the MassDEP observed that leachate tank no. 3 was full in excess of 100% of its effective capacity. Therefore, New Ventures is not in compliance with Paragraph 1(v).

8. Paragraph 1(z) of the Order requires New Ventures to submit the final Comprehensive Site Assessment Report to the MassDEP by July 9, 2007. As of the date of this letter New Ventures has not submitted the CSA Report. Therefore, New Ventures is not in compliance with Paragraph 1(z) of the Order.

In order for a landfill to be closed in a manner that protects public health, safety, welfare and the environment with construction and demolition fines and residuals, an owner/operator must be financially capable of performing each of the following actions simultaneously in compliance with applicable regulations and permits:

- Provide licensed engineering and environmental consultant services to prepare operating and closure plans;
- Maintain and monitor the landfill in its entirety while filling occurs (e.g., manage storm water, protect wetlands, monitor surface and groundwater);
- Implement and maintain best management practices during filling (such as litter and dust control, proper soil/C&D mixing, erosion control; application of daily cover at the working face; prevention of odors);
- Operate and maintain landfill gas collection and treatment systems;
- Control leachate – implement measures to prevent leachate generation; remove leachate from wetlands and collection systems for proper off-site disposal; address leachate break-outs;
- Prevent problems from occurring and manage problems when they occur associated with ongoing filling operations and the general maintenance and monitoring of the landfill; and
- Construct systems approved to permanently close those portions of the landfill that have reached final approved filling grades.

New Ventures has demonstrated that it cannot perform all of the above actions in compliance with the Order and applicable regulatory requirements, or in a manner that protects the public health, safety, and welfare.

For all of the above reasons, and for the reasons stated in the MassDEP's July 4, 2007 Notice, New Ventures continues to be in noncompliance with the provisions of the Order. Therefore, the MassDEP does not approve the resumption of the receipt and placement of Construction and Demolition material at the Landfill.

If you have any questions please contact me at (978) 694-3299.

Sincerely,

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

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Solid Waste Management Section

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